upon to answer three specific charges relating only to the month of May 1949.

Section 428 of the Criminal Procedure Code provides that no finding of a Court of competent jurisdiction shall be reversed on account of, *inter alia*, the improper admission of evidence unless such improper admission has occasioned a failure of justice. I considered in the circumstances whether there was evidence on which the learned President could properly have convicted, assuming he disregarded the evidence I considered had been rendered inadmissible under the amended charges. There are at least two features of the case which have led me to the conclusion it would be unsafe to uphold the convictions even reviewing the evidence on this basis. In the first place the learned President did not, apparently, consider the two pump operators, prosecution witnesses 4 and 7, accomplices. It seems to me that if the prosecution evidence is true they both knew well they were intentionally aiding the appellant to commit offences, and that, therefore, they were accomplices. In the second place each of these witnesses stated that *he* received Ex. P5 A, B, C,— documents which form the basis of the charges on which the appellant was convicted — from the accused, but there is nothing in the learned President's judgment to indicate that he had duly weighed the importance to be attached to this contradication on a most material point in reaching his decision. As it seemed to me the learned President had misdirected himself on the first of these matters, and that there was nothing to indicate he had adequately directed his mind to the second, I considered the convictions could not stand.

I decided not to order a re-trial in this case. In so deciding I was partly guided by the principle which has been stated by Murison, C.J. in the following terms: "I have grave doubt whether the power to order a re-trial is intended to be exercised in cases where the prosecution have, entirely through their own fault, failed to represent their case properly. If I complied with this petition it looks to me as if I should be ordering that an acquitted person should be tried a second time, only for this reason that the prosecution has not used all their available armoury in launching the first prosecution." (*vide Mallal's* Criminal Procedure Code 3rd Ed. p. 368). It is clear that these words are not entirely applicable to this case. The prosecution displayed great energy in using all their available armoury, but mismanaged it. Notwithstanding this situation I was prepared to consider a re-trial if it could be shown there was evidence which, properly admitted, I considered might warrant convictions, and before reaching my decision I invited the learned Deputy Public Prosecutor who argued the appeal to make any submissions he wished indicating the existence of such evidence. It appeared to me after hearing his submissions that it would not be the most equitable course to order a re-trial.

Appeal allowed.

LEO HOON HONG v. MUNICIPAL COMMISSIONERS OF THE TOWN AND FORT OF MALACCA.

[Orig. Civ. Juris. (Abbott, J.) November 13, 1950]

[Malacca — Originating Motion No. 9 of 1950]

Malacca (Municipal) Boarding Houses Byelaws, 1937, Byelaw 4 — Cancellation of licence.

This was an application for a writ of certiorari to quash a decision by the Municipal Commissioners of Malacca. The applicant held a licence issued under the Malacca (Municipal) Boarding Houses Byelaws, 1937, in respect of "The London Hotel". On the 7th of November, 1949, the applicant was convicted of an offence under Byelaw 6(iii) of the Byelaws in that he allowed certain rooms in the hotel to be used for immoral purposes. The Municipal Commissioners could have cancelled the licence forthwith but instead they appointed a sub-committee to hold an inquiry. The sub-committee made an inquiry and as a result of their report the Municipal Commissioners directed the cancellation of the licence.

Held, that there was nothing to show that the procedure adopted by the sub-committee or that of the Municipal Commissioners as a body when they considered the report of the sub-committee to suggest that it was in defiance of elementary standards of justice and that there was no ground for complaint by the applicant.

Case referred to :—

(1) *The Local Government Board v. Arlidge* (1915) A.C. 120 at pp. 137 and 138.

APPLICATION for writ of *certiorari*.

S. E. Bell for the applicant.

P. J. D. Regester for the respondents.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Abbott, J. : — This is an application for a writ of *certiorari* to quash a decision given by the respondents who are the Municipal Commissioners of the Town and Fort of Malacca.

The facts follow. From 1940 onwards the applicant held a licence, granted annually to him by the respondents under byelaw 3 of the Malacca (Municipal) Boarding Houses Byelaws, 1937, in respect of certain premises known as "The London Hotel". On the 30th of June, 1950, the respondents cancelled the licence in exercise of powers purporting to be vested in them

by byelaw 4. The material part of that byelaw reads as follows :—

"4. A licence issued under these bye-laws may be cancelled by the Commissioners at any time ....if the licensee has been convicted of any offence against the provisions of the Municipal Ordinance or any bye-laws thereunder..... or if, after inquiry, the Commissioners are satisfied that the premises are being used for any .... immoral purpose."

On the 7th of November, 1949, the applicant was convicted in the Malacca Magistrate's Court of an offence against byelaw 6(iii) of the byelaws (which were made under the authority of the Municipal Ordinance, Cap. 133) in that he allowed certain rooms in the hotel to be used for immoral purposes. I pause here to observe that, in respect of this conviction, the applicant rendered himself liable for cancellation of his licence without further ado. The respondents, however, did not proceed to cancel his licence forthwith, but they decided, at a meeting held on the 15th of March, 1950, to hold an inquiry — as they were empowered by byelaw 4 to do — and they appointed a sub-committee of three Municipal Commissioners to investigate the matter and report back. In the meantime, and pending their eventual decision, the respondents decided to renew the applicant's licence which had expired at the end of the year 1949. The sub-committee proceeded to hold the investigation and the applicant, having been afforded the opportunity of being present, gave evidence. The sub-committee duly reported back to the respondents who, at a meeting held on the 24th of May 1950, directed the cancellation of the applicant's licence.

The proceedings of the sub-committee have been attacked in this Court upon the ground that they lacked the necessary regularity of a quasi-judicial investigation. The gravamen of the charge of irregularity was that, in addition to the members of the sub-committee and the applicant, two other persons, namely, a police officer (who had given evidence against the applicant in the Magistrate's Court trial already mentioned) and a Mr. Wilson (who is a clerk in holy orders) were present throughout. On the part of the applicant it was suggested that the presence of these two last-named gentlemen raises a suspicion that there had been an improper interference with the course of justice. An affidavit, sworn to by a member of the sub-committee, has been put before this Court. This affidavit, which has not been controverted by the applicant in any material respect, had made three matters abundantly clear — (1) that the police officer was a witness at the sub-committee's investigation, that he gave evidence and that the applicant was afforded full opportunity of questioning him, (2) that Mr. Wilson was not concerned in that particular investigation and (3) that both the police officer and Mr. Wilson had withdrawn before even the sub-committee commenced to deliberate upon its report. Likewise the affidavit makes it abundantly clear that if these two gentlemen remained in the presence of the sub-committee after the appellant himself had withdrawn it was because their presence was required in connection with another and further matter in which the applicant was in no way concerned or involved.

I see no reason whatsoever to hold that the procedure adopted by the sub-committee or that of the respondents, as a body, when they considered the report of the sub-committee, to suggest that it was in defiance of elementary standards of justice. (See the judgment of Lord Shaw of Dunfermline in *The Local Government Board v. Arlidge*[1]).

As I have already pointed out, it was open to the respondents to cancel the licence, consequent upon the applicant's conviction, without recourse to an inquiry — and this, by the very wording of byelaw 4, they were empowered to do at any time. The fact that they did so after the lapse of a little more than six months after the conviction does not, in the view of this Court, invalidate the cancellation. Nor, in the view of this Court, can the respondents be considered to have condoned the conviction by reason of having granted the fresh licence (which they subsequently cancelled) pending the consideration of what they considered to be appropriate action under byelaw 4. The very fact that they granted this interim licence shows that the respondents were activated by the very proper desire to act justly and not to deprive the applicant of the opportunity of earning his livelihood while the allegations concerning his [illegible] of the hotel were awaiting consideration.

If the respondents had cancelled the applicant's licence, without any inquiry, upon being informed of the conviction the applicant would not have had a leg to stand on. As it is, the applicant complains of the inquiry which was held, as it appears, out of abundant precaution and this Court is unable to find any substantial ground of complaint.

Leave to issue the writ is refused.

I will deal finally with the payment of costs. The applicant was convicted in the Magistrate's Court of offences relating to his conduct of the hotel; he did not appeal against that conviction. The consequence of that conviction was the loss of his hotel-licence after inquiry by the respondents. In the view of this Court, since the applicant's complaints have been found to be

groundless, these present proceedings ought never to have been brought. I am satisfied, therefore, that the proper order as to the respondent's costs is that they be paid in full (as between solicitor and client) by the applicant.

Order accordingly.

CHANG KAN NAN v. LUDHIANA TRANSPORT SYNDICATE.

[Oriv. Civ. Juris. (Abbott, J.) October 25, 1950]

[Seremban — Civil Suit No. 24 of 1949]

Executors (Powers) and Fatal Accidents Enactment — Negligence of bus driver in allowing deceased to ride in driver's compartment — Assessment of damages.

In this case the father of the deceased boy claimed damages and funeral expenses from the defendants on the allegation that the boy's death was brought about by the negligence of one of the defendants' servants. It appeared that the deceased boy was allowed by the bus driver to ride in the driver's compartment and that after a collision between the bus and a private motor car, the boy sustained injuries of which he died. On the evidence it appeared that the collision was caused by the negligence of the driver of the private motor car.

Held, that in this case the driver of the bus was negligent in carrying the deceased in a part of the vehicle where he might be exposed to undue danger and that therefore the defendants were liable for damages.

Cases referred to:—

(1) *Latham v. R. Johnson & Nephew, Ltd.* (1913) 1 K.B. at page 413.

(2) *Benham v. Gambling* (1941) A.C. 157.

ACTION.

S. E. Bell for the plaintiff.

F. J. Woodward for the defendants.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Abbott, J. : — This is a claim founded upon the Executors (Powers) and Fatal Accidents Enactment, Cap. 19 of the Laws of the Federated Malay States. The father of the deceased, who at the time of his death was a fourteen-year-old schoolboy, claims damages and funeral expenses from the defendants on the allegation that the boy's death was brought about by the negligence of one of the defendant's servants.

There has been a conflict of testimony and I will briefly set out the facts as I find them to be.

On the 8th of December, 1948, the deceased with three companions, two of whom gave evidence, left home on the way to school whither they were to proceed by bus going along an estate road from Ladang Geddes to Bahau. The bus which they boarded was the property of the defendants and, on the day in question, it was being driven by one of their servants. The deceased was a fare-paying passenger in that he had been provided with a season-ticket by his father. At the time that the boys boarded the bus it was full inside and passengers were standing; since there was no room for them within the driver invited them to travel in that part of the bus which constructionally had been set apart for the accommodation of the driver. I have seen a bus, agreed to be similar to the bus in question, and it is sufficient for me to say that the place set apart for the driver was clearly not intended nor suitable for the use of passengers — but it was in that place that the deceased, with his companions, travelled. The bus proceeded on its way at a speed which may have seemed fast, or very fast, to the passengers, but, since there was no conclusive evidence of the speed, I am unable to hold that it was travelling at an excessive speed having regard to all the circumstances. Within a few feet of rounding a bend in the road the bus came into collision with a private motor car which was coming from the opposite direction and, as the photographs show, the two vehicles sustained slight and severe damage respectively. The impact of the collision occasioned to the deceased the injuries of which, shortly afterwards, he died. There was evidence, which I am not prepared to reject, that the driver of the private motor car was driving negligently. I am not, however, satisfied that that driver of the bus was also driving negligently. Consequently, I find as a fact that the collision was occasioned by the act of the driver of the private motor vehicle.

I pause here to observe that, upon the application of the defendants, leave was obtained to join the driver of the private motor car as a third party. The Court was, however, informed that it had not been possible to effect service upon him and that there was no reason to believe that such service would be effected upon him within a measurable distance of time — either because he was evading service or because, less blameworthy, he had quitted the district without leaving information concerning his future movements.

It remains to be decided whether the driver of the bus, in inviting and permitting the deceased to travel where he in fact did, was guilty of the negligence which was the effectual cause of the deceased's death. It is well-settled law that those responsible for conveying fare-paying passengers in public-service vehicles owe a very high degree of care towards those whom they convey. To carry any passenger in or on any part of